

**PUBLIC VERSION**

November 12, 2001

Mr. Andrew Stephens  
Director of Steel Trade Policy  
Office of United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

Re: *Silgan Containers' Request to Exclude Ultra-Wide Tin Mill Products  
from Steel Remedy*

Dear Mr. Stephens:

This letter is submitted on behalf of Silgan Containers, a U.S. customer of tin mill products, in accordance with the Office of the U.S. Trade Representative's Notice of Request for Public Comments on Potential Action Under Section 203 of the Trade Act With Regard to Imports of Certain Steel, 66 Fed. Reg. 54321 (Oct. 21, 2001). Silgan requests that imports of certain *ultra-wide tin mill products* be excluded from any remedy action undertaken by the President in the steel case.

This letter is comprised of two sections.<sup>1</sup> Section I provides the specific information requested in USTR's *Federal Register* notice, and Section II offers additional legal analysis. Attached to this letter is a copy of the affidavit submitted to the International Trade Commission (ITC) in support of Silgan's exclusion request.

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<sup>1</sup> In accordance with Section 2003.6 of USTR's regulations, Silgan Containers requests confidential treatment for the business confidential data provided on page 5 of this letter. The data provides the quantity and value (and therefore the purchase price) of Silgan's purchases. Public release of this data would cause substantial harm to Silgan's competitive position.

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**I. Information Requested in USTR's *Federal Register* Notice****A. *Product Designation and HTS Classification***

Silgan seeks exclusion for two ultra-wide *tin mill steel* products, an ultra-wide tin free steel (i.e. coated with chromium) product and an ultra-wide tin plated (i.e. coated with tin) D & I product. Both products are often considered flat-rolled steel. Precise descriptions of the product are provided below (in Section B).

Imported tin free steel is entered under HTS classification -- 7210.50.00.00. Imported tin plate is entered under HTS classification -- 7210.12.0000

**B. *Product Description*****(1) The tin free steel product**

Tin free steel in gauges 55 lb. base box to 112 lb base box, single reduced, continuously annealed, in widths equal to or exceeding 42 inches.

**(2) The tin plate product**

Electro-tinplated flat-rolled carbon or alloy steel, in gauges 80 lb to 110 lb per base box, single reduced, continuously annealed, in widths equal to or exceeding 45 inches.

**C. *Basis For The Exclusion***

The basis for requesting the exclusion of the two tin mill steel products noted above is simple and straightforward: These products are not available from U.S. producers. Consequently, imposing import restraints on these tin mill steel products would cause substantial harm to U.S. consumers, such as Silgan, without any benefit at all to U.S. producers.

Silgan Containers buys ultra wide tin mill steel for the production of food containers. Silgan has manufacturing facilities in several states across the country, and produces cans used by most, if not all, major food processors. Currently, Silgan purchases over 93 percent of its requirements from U.S. domestic mills. The small amount of imported tin mill products that it purchases is primarily for specialized applications and is either not available from U.S. producers or is of a quality level that Silgan cannot obtain from U.S.

producers. Silgan has traditionally imported from Japan, Europe and Canada, though Silgan stopped importing from Japan after antidumping enforcement action was taken. Although Silgan is committed to purchasing domestically the vast majority of its requirements, it must look to foreign suppliers for specialty products like ultra wide tin free steel.

Silgan Containers has recently surveyed all of its U.S. domestic suppliers, but to no avail. Extra-wide tin free steel is not currently (and has not been for a number of years) available in commercial quantities from U.S. suppliers. To the best of our knowledge, U.S. mills have never produced in commercially significant quantities tin mill steel coils 42 inches in width or more. The domestic industry's inability is due to the simple physical size constraints of its rolling mills.

The fact that no U.S. domestic producer makes ultra wide tin mill steel would be unimportant if some other tin mill product (*i.e.*, narrower), which was made domestically, were substitutable, but none are. Silgan Containers has specialized machinery and equipment that was designed specifically to use ultra-wide tin mill steel. Consequently, tin mill steel in narrower widths cannot be substituted without an unacceptable loss of capacity and productivity.

Silgan Containers is the single largest consumer of tin mill products in the country. Silgan Containers has 38 plants around the country that manufacture tin cans for a variety of foods and beverages. In one or more of its manufacturing facilities, Silgan has invested substantial sums to increase capacity and improve productivity. Part of this investment has been to acquire special machinery and equipment to handle extra-wide tin mill steel coils.

Prior to the imposition of antidumping duties last year, Silgan sourced 42-inch wide tin mill steel from Japan for use in making "603 ends," the tops and bottoms of institutional/restaurant size food cans. Silgan's equipment is designed to run 42-inch wide coils, allowing us to stamp multiple ends per stroke. No U.S. mill can produce 42-inch wide tin free steel. If Silgan buys U.S. produced (narrower) coils, it loses 16 percent of its output. This not only affects Silgan's costs, but it constrains its capacity. In order to meet its customers' requirements, this line must operate 24 hours a day, 12 months per year, except for essential maintenance time and holidays. Reducing the output by using narrower coils means that Silgan could not supply its customers' needs from that facility.

Given that these manufacturing facilities have specialized machinery and equipment specifically to handle ultra-wide tin mill steel, domestically produced narrower coils simply cannot be substituted without sacrificing needed capacity and/or productivity.

In short, domestic consumers such as Silgan rely on imported raw materials. Any additional restrictions on these imports would increase its costs without benefiting the domestic steel industry that does not produce ultra wide tin mill steel. Even supply disruptions would have significant negative effects. Silgan's customers, the fruit and vegetable industry, rely on a consistent supply of containers. If fruits and vegetables are not canned within 24 hours of harvesting, the crop must be thrown away. Safeguards relief would inhibit Silgan's ability to buy imported steel when it needs it, jeopardizing Silgan's ability to satisfy its customers' demands.

An affidavit in support is provided in Exhibit 1.

***D. Names Of Domestic And Foreign Producers***

As noted above, there is no U.S. producer that is able to manufacture tin mill steel in widths exceeding 42 inches.

Silgan is aware of the following *foreign* producers that are able to produce ultra-wide tin mill steel.

<i>Japan</i>	<i>the Netherlands</i>	<i>Canada</i>	<i>Germany</i>
Nippon Steel Tokyo, Japan	Corus Group, plc the Netherlands	Dofasco Inc. Ontario, Canada	Rasselstein Germany

***E. Total U.S. Consumption and Projections***

It is Silgan's understanding that Silgan is the only customer of ultra-wide tin mill steel. Silgan's consumption for the past five years, and its projected consumption for the next four years, are provided on the next page.

### Silgan's Historical and Projected Consumption

#### Ultra-wide Tin Free Steel

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
quantity (short tons)	[ ]	0	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
value '(000)			[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

#### Ultra-wide Tin D & I Tin Plate

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
quantity (short tons)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
value '(000)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

### ***F. Total U.S. Production***

As noted above, there is no U.S. production of ultra-wide (i.e. more than 42 inches) tin mill steel products.

### ***G. Commercial Substitutes***

There are really no commercial substitutes for ultra-wide tin mill steel products. Silgan has invested in specialized equipment specifically to handle and process ultra-wide tin mill steel products. While Silgan could, theoretically, utilize narrower tin mill steel coils on other equipment, Silgan would incur substantial yield losses in doing so. Silgan does not believe that a different product that causes substantial yield losses qualifies as a “commercial substitute.”

## **II. THE SAFEGUARDS STATUTE REQUIRES A NARROWLY TAILORED REMEDY AND THEREFORE AUTHORIZES THE EXCLUSION OF ULTRA-WIDE TIN MILL STEEL.**

The USTR’s proposed remedy should avoid causing more economic harm than good to the national economy. Any 201 remedy should not deny steel consumers access to specialty products, unavailable from the domestic industry, that could not possibly cause or threaten serious injury to the domestic steel industry. The law mandates that the USTR’s proposed remedy regarding these fairly traded imports be no more restrictive than necessary to prevent or remedy the serious injury or threat thereof.<sup>2</sup> Moreover, the President may only implement relief that bestows greater benefits on producers than harm on consumers. The law and the facts demonstrate that the USTR has the responsibility and the ability to craft just such a remedy in this case.

The USTR has ample statutory authority to exclude products from its proposed remedy that do not cause or threaten serious injury to the domestic industry. Under section 203, the President must balance the economic welfare of the country – including the interests of other industries and consumers – against that of the affected domestic industry, and “take all appropriate and feasible action within his power {to} facilitate efforts by the domestic industry to make a positive adjustment to import competition *and*

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<sup>2</sup> 19 U.S.C. § 2253 (a)(3)(C).

*provide greater economic and social benefits than cost.*"<sup>3</sup> Accordingly, the President must consider "the short and long term economic and social costs of the actions authorized . . . relative to their short and long term social benefits and other considerations relative to the position of the U.S. industry in the U.S. economy."<sup>4</sup> The President must also consider "other factors related to the national economic interest of the United States, including, but not limited to . . . the effect of the implementation of actions . . . on consumers and on competition in domestic markets."<sup>5</sup>

Under these balancing tests, Presidents Reagan and Carter refused to provide import relief under section 203 when they determined that it was not in the national interest. President Reagan decided not to provide any import relief in *Nonrubber Footwear* because he determined that the benefits to the industry would be temporary and outweighed by the costs to consumers and international trade.<sup>6</sup> President Reagan also declined to provide import relief in *Copper*, because doing so would have seriously disadvantaged the copper fabricating industry, which employed 106,000 workers.<sup>7</sup> President Carter determined that providing import relief would not be in the national economic interest in *Certain Stainless Steel Flatware* and in *Bicycle Tires and Tubes* because sectors of the relevant domestic industries were considered competitive and profitable.<sup>8</sup> In *Certain Fishing Tackle*, President Carter denied import relief because market conditions had improved.<sup>9</sup> In *Unalloyed Unwrought Copper*, President Carter found that providing import relief would have undermined the competitiveness of the U.S. copper-fabricating industries and had a widespread inflationary impact.<sup>10</sup>

The USTR must keep these presidential prerogatives in mind when crafting a remedy, and ensure that its recommendations would not unduly harm steel consumers, cost more jobs than might be preserved, or needlessly

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<sup>3</sup> 19 U.S.C. § 2253(a)(1)(A) (emphasis added).

<sup>4</sup> 19 U.S.C. § 2253(a)(2)(E).

<sup>5</sup> 19 U.S.C. § 2253(a)(2)(F)(ii).

<sup>6</sup> Nonrubber Footwear Industry: Message to the Congress, 1985 Pub. Papers 1009 (Aug. 28, 1985).

<sup>7</sup> Copper Import Relief -- Letter to the speaker of the House and the President of the Senate, 20 Weekly Comp. Pres. Doc. 1240 (Sept. 6, 1984).

<sup>8</sup> *Operation of the Trade Agreements Program*, USITC Pub. 1021 at 4 (1978).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

fuel inflation. These considerations are especially relevant to this case because the subject merchandise is incredibly broad and varied, consisting of many different products, used in diverse applications, and not all of which are made by the domestic industry.

Indeed, there is substantial precedent in this very proceeding to exclude specialty products from any 201 remedy. Annex II to the U.S. Trade Representative's request for investigation specifically excluded many products that are not available from U.S. producers. These exclusions reflected a recognition by the government that certain products whose imports do not injure the domestic industry should be excluded from the scope of this case.

Such recognition is not surprising. Product exclusions are a common occurrence in Section 201 cases. President Clinton excluded artice line pipe from the remedy in *Certain Circular Welded Carbon Quality Line Pipe*.<sup>11</sup> Also, President Reagan approved several exemptions in *Certain Stainless Steel and Alloy Tool Steel*, stating:

"I determined to impose additional tariffs and quantitative restrictions, with exemptions for certain articles which are not produced in the United States or are produced in such small quantities that their exemption would not have an adverse impact on the domestic industry."<sup>12</sup>

This standard established by President Reagan is sound and should be used a guide for excluding products in this investigation.

The President is not limited to the exclusions recommended by the Commission. It is yet unclear whether the Commission will recommend exclusion of any products. Indeed, the Commission discouraged parties from discussing exclusion requests during the public remedy hearings. If the Commission does not make any recommendations regarding exclusions, it is vital that the USTR take an aggressive role in pursuing exclusions.

The President has the authority to exclude more products than what the Commission has excluded in its remedy recommendations. For example, in *Certain Steel Wire Rod*, Commissioners recommended that certain specialty products should be excluded because purchasers would be needlessly affected by relief on products that were not available from domestic producers

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<sup>11</sup> See Proclamation No. 7274, 65 Fed. Reg. 9196 (Feb. 18, 2000).

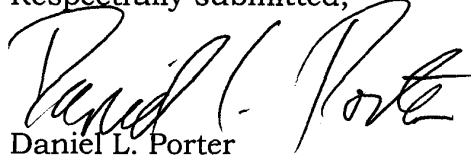
<sup>12</sup> See Proclamation No. 5074, 48 Fed. Reg. 33233 (July 19, 1983) (emphasis added).



or in sufficient quantities to satisfy demand.<sup>13</sup> The President agreed, excluding several more specialty products from the relief -- over the objections of domestic producers.<sup>14</sup>

Thus, the President has the demonstrated authority, consistent with his statutory obligations, to craft a remedy that excludes products that neither substantially cause nor threaten serious injury to the domestic industry. Importation of ultra-wide tin mill steel products (i.e. exceeding 40 inches) meet this standard. Thus, imports of ultra-wide tin mill steel should be excluded from any remedy.

Respectfully submitted,



Daniel L. Porter  
Willkie Farr & Gallagher

Counsel to Silgan Containers

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<sup>13</sup> *Certain Steel Wire Rod*, TA-201-69, USITC Pub. 3207 at I-56 (Jul. 1999) (separate views of Chairman Miller and Commissioner Koplan).

<sup>14</sup> *See* Proclamation No. 7273, 65 Fed. Reg. 8621 (Feb. 18, 2000); *Technical Correction to the Harmonized Tariff Schedule of the United States*, 65 Fed. Reg. 13,815 (USTR Mar. 14, 2000).

**Declaration of Robert L. Owen  
Silgan Containers Corp.**

I, Robert L. Owen, declare and state to the best of my knowledge, information, and belief, that:

1. I serve as director of procurement for Silgan Containers Corporation, which is the largest producer of food cans and purchaser of tin mill products in the United States. We purchase nearly one million tons of tin mill products a year, which accounts for about one-half of all tin mill products consumed in the production of food cans. We have 38 processing plants around the country that transform the tin mill steel into steel cans.
2. All tin mill steel is not fungible. There are important differences between sizes and types of products. Indeed, Silgan has more than 600 different tin mill steel specifications for use in our can processing facilities..
3. Silgan purchases over 93 percent of our steel requirements from U.S. producers. Despite this commitment to purchasing domestically, Silgan must import certain products for use in specialized applications.
4. One of these products is "ultra wide tin free steel," which is tin free steel in gauges 75 lb. base box to 112 lb. base box, single reduced, continuously annealed, in widths equal or exceeding 42 inches. Prior to the imposition of antidumping duties last year, we sourced 42-inch wide tin free steel from Japan for use in making ends for food cans. We did this because our equipment is designed to run 42-inch wide coils, allowing us to stamp multiple ends per stroke. As a result of the antidumping duties, the 42-inch wide coils formerly purchased from Japan are now purchased from Holland.
5. Another product we require is "ultra wide tin plated D&I steel" which is tin coated steel in gauges from 80 lb to 110 lb per base box, single reduced, continuously annealed, in widths equal to or exceeding 45 inches. This metal is used to produce 2-piece drawn and ironed food cans. We purchase this material from Germany because no U.S. domestic producer is capable of producing this wide tin mill product.
6. No U.S. mill can produce 42-inch wide tin free steel or 45-inch wide tin plated steel. If we buy U.S. produced (narrower) coils we lose substantial output. This not only affects our costs, but it constrains our capacity. In order to meet our customer's requirements, these lines must operate 24 hours a day, 12 months per year, except for essential maintenance time and holidays. Reducing the output by using narrower coils means that we could not supply our customers needs from these facilities.
7. While I firmly believe that these products could not be injuring the domestic industry because they are not available in the U.S., I am concerned about the possibility of import restrictions. Tariffs or quotas could disrupt supply of these products, making it difficult to buy when needed. Such disruptions could restrict our ability to supply customers in a timely manner.

8. We have tried to obtain ultra wide tin free steel and ultra wide tin plated D&I from domestic producers, but have failed. These products simply are not available from within the United States and no U.S. product can replace it. If the Commission were to recommend restrictions on imports of these products, our costs would increase and our ability to meet our customers' demands would be in jeopardy, unfairly harming our business.

Robert L. Owen  
Robert L. Owen

Dated: 09-04-01

Subscribed and sworn to before me this 4<sup>th</sup> day of September 2001.

Gary J. Eggers  
Notary Public

My commission expires:

